

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)	
DEVELOPMENT PERMIT ISSUED BY)	
SAN JUAN COUNTY TO MINERAL)	
POINT COMMUNITY CLUB)	
MINERAL HEIGHTS ASSOCIATION, INC.,)	SHB No. 77-25
)	
Appellant,)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
v.)	AND ORDER
)	
SAN JUAN COUNTY and MINERAL)	
POINT COMMUNITY CLUB,)	
)	
Respondents,)	
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY and)	
SLADE GORTON, ATTORNEY GENERAL,)	
)	
Amicus Curiae.)	

This matter, the request for review of a substantial development permit issued to Mineral Point Community Club by San Juan County, came before the Shorelines Hearings Board, W. A. Gissberg, Chairman, Robert E. Beaty, Robert F. Hintz, Dave J. Mooney, Gerald D. Probst and Chris

1 Smith on September 1 and 2, 1977 in Friday Harbor.

2 Appellant appeared by and through its attorney, Janet E. Quimby;
3 respondent County was represented by Michael Redman, Prosecuting Attorney;
4 respondent-permittee was represented by Bonnie Woodin. Robert V. Jensen,
5 Assistant Attorney General for the Department of Ecology and Attorney
6 General, filed a brief as amicus curiae.

7 Having heard the testimony, having examined the exhibits, having
8 viewed the site, having considered the contentions and arguments of the
9 parties, and being fully advised, the Shorelines Hearings Board makes
10 the following

11 FINDINGS OF FACT

12 I

13 Mineral Cove is a 200 foot by 400 foot gently-sloping crescent-
14 shaped pebble beach located approximately seven miles northwest of
15 Friday Harbor on shorelines of statewide significance on San Juan
16 Island. Although the uplands in the cove are in private ownership, the
17 tidelands are publicly owned. All of the beach and much of the uplands
18 remain in a natural condition, evidencing only traces of human intrusion.
19 The scenic beauty of the cove is the epitome of the natural splendor
20 particularly associated with the San Juan Islands.

21 II

22 Respondent-permittee is a community club comprised of 21 lot owners
23 who enjoy an area reserved for common use in the Mineral Point subdivision
24 It is intended that future owners of a 55-acre area to be platted, and
25 six additional lots in the Mineral Point subdivision, will also use the
26 common area. Additionally, under certain circumstances, nonowners may

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1 also join the community club.

2 A part of the common area in Mineral Point includes a major portion
3 of the beach on Mineral Cove. It is the permittee's intention to secure
4 the shoreline permit for, but not necessarily to construct,¹ a 200 foot
5 long by a 6 foot wide floating dock in the cove anchored in place by
6 eight pilings which reach 12.5 feet above the water surface at mean lower
7 low water and 4.8 feet above the water surface at mean higher high water.
8 It is impractical to secure the 200 foot long dock in the relatively
9 shallow waters of Mineral Cove except by use of pilings. Although the
10 intended and represented purpose of the dock is to provide convenient
11 water access by dinghys for community club members, it is physically
12 possible for larger boats to use the dock. Without the dock, it is
13 necessary to secure a dinghy by pulling it a short distance up the gently-
14 sloping, pebbly beach to higher ground.

15 III

16 Appellant is an association of property owners in a nearby subdivision
17 which lies west of the Mineral Point subdivision. A portion of the
18 appellant's property lies on the beach of Mineral Cove and is separated
19 from Mineral Point subdivision by an intervening landowner.

20 IV

21 On September 17, 1976, respondent-permittee applied for a shoreline
22 substantial development permit (#20SJ76). After receiving comments and
23 based upon an assumption that 21 lots would be using the dock, the

24
25 1. The owner and developer of the Mineral Point subdivision does
26 not intend to undertake the expense of actual construction, but will
27 leave the decision of whether to construct and its expense to the members
3 of the community club.

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1 Planning Commission recommended approval of the application at its
2 January 20, 1977 meeting subject to investigation of anchoring the dock
3 other than by pilings and providing access for owners of appellant's
4 subdivision.

5 V

6 On April 4 and 5, 1977, the Planning Department recommended that the
7 Board of County Commissioners deny the application but if such was not
8 denied that an environmental impact statement (EIS) be prepared.
9 Thereafter, on April 13, 1977 the Director of the Planning Department
10 formally determined that the proposal would have a significant adverse
11 impact upon the environment and that an EIS would be required.
12 Respondent-permittee appealed the Director's decision to the County
13 Commissioners as provided by ordinance, on May 16, 1977, after hearing
14 the matter they overturned the decision and approved the application
15 for a permit.

16 VI

17 At the time of permit issuance, the master program for San Juan
18 County was adopted by the County and approved by a letter from the
19 Department of Ecology but not incorporated into the Washington
20 Administrative Code. The master program is ascertainable.

21 The proposed development is located in a conservancy environment
22 designation.

23 VII

24 Section 4.05 of that master program provides that new developments
25 in conservancy environments should be restricted to that which will be
26 compatible with the natural limitations of the land and water, and will
27 not require extensive alteration of the land-water interface. Activities

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5 r No 9928-A
CONCLUSIONS OF LAW AND ORDER

1 and uses in such environment which substantially degrade or permanently
2 deplete the physical or biological resources therein are prohibited.

3 VIII

4 The policy of Section 5.08 of the master program provides that
5 preferences should be given to joint use of a single dock as opposed to
6 construction of several individual structures. The intent of such
7 provision is to prevent proliferation of many individual structures there-
8 by avoiding a "porcupine effect" on the shorelines. In furtherance of
9 this policy, all waterfront subdivisions approved after adoption of the
10 master program² are required to provide for a single, joint-use moorage
11 facility to serve all lots in the subdivision, and individual docks and
12 piers are generally prohibited. The policy section also encourages
13 floating docks in areas of high scenic value and where conflicts with
14 recreational boaters and fishermen will not be created. Additionally,
15 the section provides that docks and piers are permitted in a conservancy
16 environment subject to other provisions of the master program and "only
17 where no feasible alternative site is available."

18 IX

19 The instant floating dock is intended for common use of the Mineral
20 Point subdivision and such lots as may later be added thereto. Although
21 "feasible alternative sites" on San Juan Island for dinghy moorage are
22 found at Friday Harbor, Roche Harbor, and Snug Harbor, there presently
23 are no readily available moorages at any of the sites. The foreseeable
24

25 2. Because the Mineral Point subdivision was approved before the
6 adoption and approval of the master program, the provision requiring joint-
use moorage facility is not applicable.

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1 demand for such moorage will increase as evidenced by the County's
2 increasing population growth and increasing number of permit applications.
3 We find that there are no "feasible alternative sites" available for
4 the water moorage of dinghys.

5 X

6 The master program policies for governing the use of shorelines of
7 statewide significance gives an order of preference to uses which, inter
8 alia, preserve the natural character of the shoreline, produce long
9 term rather than short term benefits or conveniences (including
10 minimization of adverse visual impact), and protect the natural resources
11 and systems of the shoreline. Section 6.03.

12 XI

13 The proposed 200 foot long dock would not preserve the natural
14 character of the shoreline, but would be a gross intrusion upon the
15 natural setting of the cove. The 200 foot long dock, for water access by
16 dinghys, produces a structure intended for short term benefits and for
17 convenience of those not desiring to secure their dinghys on the beach.
18 In this 200 foot by 400 foot cove the dock would have an adverse visual
19 impact.

20 XII

21 Appellant's members find the area to be a pleasant quiet place, take
22 walks thereon and enjoy the resplendence of the natural cove. They
23 contend, and we so find, that the proposed dock would be an extensive
24 modification of the cove which would detract from the aesthetics and
25 add increased human activity and pollution therein. Because the uplands
26 have been platted, however, the County considers the natural state to be
27 a victim of "inevitable degradation" and no longer pristine and

FINAL FINDINGS OF FACT,

1 undeveloped. Indeed, building upon the platted lots would change the
2 scenic quality of the uplands. However, building a 200 foot floating
3 dock upon the beaches and public tidelands is not inevitable and would
4 noticeably change what is otherwise a scenic view of natural shorelines
5 of statewide significance.

6 XIII

7 The proposed development will not result in biological harm to the
8 environment. It was not shown to be in conflict with recreational
9 boaters and fishermen.

10 XIV

11 Any Conclusion of Law which should be deemed a Finding of Fact is
12 hereby adopted as such.

13 From these Findings, the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over the persons and over the subject
17 matter of this proceeding.

18 II

19 Respondent County's decision that the proposed 200 foot floating dock
20 was not a major action significantly affecting the quality of the
21 environment is to be accorded substantial weight. RCW 43.21C.090.
22 Appellant has not produced evidence which can persuade us that the County's
23 decision was in error.

24 III

25 The master program does not prohibit, and does allow, a dock at
26 Mineral Cove. Consistency with other sections of the master program and
27 with RCW 90.58.020 is required before a dock is permitted, however.

1 RCW 90.58.140(2). The common thread running through most of appellant's
2 contentions, and the major issue herein, is aesthetics. RCW 90.58.020
3 provides in part that

4 In the implementation of this policy the public's
5 opportunity to enjoy the physical and aesthetic qualities
6 of natural shorelines of the state shall be preserved to
 the greatest extent feasible consistent with the overall
 best interest of the state and the people generally.

7 We have held that aesthetics is an appropriate basis to test a permit
8 with the consistency requirements of the Act. Department of Ecology and
9 Attorney General v. Mason County and Hama Hama Co., SHB No. 115. Where
10 a proposed development was aesthetically incompatible with adjacent
11 areas, such development was not permitted. McCann, et al. v. Jefferson
12 County and Pleasant Tides Properties, SHB No. 144. Because of the
13 subjective nature of aesthetics, we have held that the determination of
14 local government is entitled to greater weight than is an individual
15 opinion. Lane v. Town of Gig Harbor, SHB No. 129. However, whenever
16 substantial numbers of people differ in such opinion on shorelines of
17 statewide significance, as here, the determination is not heavily
18 weighted. The proposed dock, being in a pocket cove, would be visible
19 from the water only from a northwest viewpoint. Also viewed from the
20 water, those future homes which may be built could affect the view of
21 the uplands. This latter consideration apparently weighed heavily in
22 the County's decision since the shoreline was "already given over to
23 subdivision use, therefore no longer pristine and undeveloped." We reject
24 this bootstrap logic. Homes are not being constructed in public waters
25 and upon public tidelands, and the argument is not persuasive for permitting
26 such a relatively large dock on the shores and in the waters of the cove

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1 The uncontrolled and increased human activity attracted to the large dock
2 ostensibly for dinghys would also be detrimental to the aesthetics of
3 the cove. We conclude that the 200 foot long by 6 foot wide floating dock,
4 with eight pilings towering as much as 12.5 feet above the water surface
5 in a small 200 foot by 400 foot natural, pristine cove on shorelines of
6 statewide significance is not aesthetically compatible with the area.
7 The floating dock is thus inconsistent with RCW 90.58.020 and sections
8 4.05 and 6.03 of the master program. An appropriately conditioned
9 and limited-sized floating dock adequate to meet its intended purpose, and
10 on a smaller scale or a winch installation to assist in the beaching of
11 dinghys would not be such an affront to the beauty of the cove.

12 IV

13 The proposed dock is inconsistent with Section 6.03 of the master
14 program for the additional reason that the uncontrolled use of such a large
15 dock does not favor public and long-range goals, but centers upon the
16 convenience, i.e., having a dock longer than is necessary for dinghys,
17 of private club members.

18 V

19 Because of its inconsistency with Sections 6.03 and 4.05 of the
20 master program, the proposed dock is inconsistent with Section 5.08.

21 VI

22 Appellant did not prove that the proposed dock would substantially
23 interfere with the public's use of the water.

24 VII

25 The shoreline substantial development permit issued to Mineral
26 Point Community Club should be vacated.

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VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters this

ORDER

Shoreline Substantial Development Permit No. 20SJ76 issued to Mineral Point Community Club by the San Juan County is vacated.

DATED this 29th day of September, 1977.

SHORELINES HEARINGS BOARD


W. A. GISSBERG, Chairman


ROBERT E. BEATY, Member


ROBERT F. HINTZ, Member


DAVE J. MCONEE, Member


GERALD D. PROBST, Member


CHRIS SMITH, Member